

COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. **05-MSRC-009**

COMMONWEALTH OF KENTUCKY,
OFFICE OF MINE SAFETY AND LICENSING

COMPLAINANT

FINAL ORDER FOR HIBBARD

**HOMER SAMS, LONNIE RICE,
DELMAS JACKSON & FLOYD HIBBARD**

RESPONDENTS

* * * * *

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Complainant, Office of Mine Safety and Licensing (OMSL) and Respondent **Floyd Hibbard**, and the members of the Commission having reviewed the Settlement Agreement filed on or about December 14, 2006 in the matter herein, and the Commissioners being sufficiently advised,

IT IS HEREBY **ORDERED** as follows:


1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. The formal hearing and pre-hearing conference are **CANCELLED**;
3. The **Settlement Agreement** signed by the parties and filed with the Commission is hereby **incorporated by reference** as if reproduced herein in full as a material part of this **FINAL ORDER**.

A copy is attached hereto;

4. This Final Order only resolves the matters referenced herein, and any new enforcement action or subsequent penalties imposed during any probationary period are in addition to and not in lieu of those that may be sought by OMSL for the acts or omissions during that probationary period. This Final Order in no way prohibits OMSL from investigating or filing legal action based upon other activities or omissions by the Respondent not arising from the factual basis of the original violation and resolved herein;
5. This Final Order shall be considered to constitute a **“subsequent offense”** as that term is defined in 805 KAR 8:010, Section 1(13) ;
6. This Final Order represents a final disposition of all issues between the Complainant and the Respondent, in these matters. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission; and

7. Appellate rights: Pursuant to KRS 351.194(8) and KRS 13B.140(1), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of this Final Order. The petition shall include the names and addresses of all parties of record in this proceeding and shall include a statement of the grounds upon which review is requested. A copy of this Final Order shall accompany the petition. Copies of the petition must be served upon the Commission and all parties of record in this proceeding.

Entered this the 14TH day of December 2006.



Denise Moore Davidson, Chair
MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ORDER was mailed, by regular mail, postage pre-paid and certified mail to the following this 18TH day of December 2006:

HON DONALD DUFF
212 WASHINGTON STREET
P.O. BOX 1160
FRANKFORT, KY 40602
Counsel for respondents

And by messenger mail to:

HON. C. MICHAEL HAINES,
GENERAL COUNSEL
OFFICE OF LEGAL SERVICES
NATURAL RESOURCES LEGAL DIVISION
#2 HUDSON HOLLOW
FRANKFORT KY 40601
502/ 564- 2356
FAX 502/ 564 - 9212

And the original shall be kept on file:
Mine Safety Review Commission
132 Brighton Park Blvd.
Frankfort Ky 40601



Bryon Alan Thompson
Hearing Officer & General Counsel
Mine Safety Review Commission

**COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
Action No. 05-MSRC-009**



**KENTUCKY OFFICE OF MINE
SAFETY & LICENSING**

PETITIONER

v.

**SETTLEMENT AGREEMENT BETWEEN OMSL,
AND FLOYD HIBBARD**

**HOMER SAMS, LONNIE RICE, DELMAS
JACKSON & FLOYD HIBBARD**

RESPONDENTS

Come the Complainant, the Kentucky Office of Mine Safety & Licensing ("OMSL") and Respondent, Floyd Hibbard ("Hibbard"), and hereby state that they have agreed to a settlement of the above-styled disciplinary proceeding, according to the following terms:

In consideration of the final resolution of this action against Hibbard, and the cancellation of the hearing as it pertains to him currently scheduled for December 14, 2006, Respondent hereby admits that the violations alleged in the OMSL complaint that initiated this disciplinary proceeding did occur on the dates asserted in said complaint at Century Operations, LLC No. 4 mine. Therefore, Hibbard hereby agrees to the following:

1. Underground Mine Foreman certificate A-778-81, Belt Examiner certificate HN-022-81, and the Underground Miner certificate issued to Hibbard by the Commonwealth of Kentucky shall be probated for a period of twenty four (24) months

from the date of acceptance of this Settlement Agreement by the Mine Safety Review Commission.

2. Hibbard shall arrange for and take eight (8) hours of special training in regard to his duties and obligations as an underground mine foreman at the Barbourville District Office of OMSL. The special training shall be completed within one hundred twenty (120) days of the acceptance of this Settlement Agreement by the Mine Safety Review Commission.

3. During the probation periods set forth in Paragraph 1, above, Hibbard shall not perform any duties in a mine in which he supervises any personnel. He may perform any other duties which require certification as a mine foreman.

4. During the probation periods set forth in Paragraph 1, above, Hibbard shall comply with all state and federal mine safety laws and regulations. The willful violation by Hibbard of any of said laws or regulations, unless otherwise specified herein, may result in OMSL filing a motion with the Mine Safety Review Commission to revoke any or all certifications issued to him by the Commonwealth of Kentucky.

The Respondent further agrees that this Settlement Agreement and any final order issued herein by the Mine Safety Review Commission will be considered by the Commission to constitute a "subsequent offense", as that term is defined at 805 KAR 8:010, Section 1(13), for him.

OMSL and the Respondent acknowledge and agree that there are no further promises, inducements, representations, or agreements in connection with this Settlement Agreement other than those expressly set forth in writing herein.

Floyd Hibbard
FLOYD HIBBARD

11-28-06
DATE

Donald Duff
DONALD DUFF, ESQ.
212 Washington Street
P.O. Box 1160
Frankfort, Kentucky 40602-1160
Ph: (502) 223-7656
Fax: (502) 223-7656

COUNSEL FOR RESPONDENTS

Johnny Greene 12-14-06
JOHNNY GREENE

Acting Executive Director
KY Office of Mine Safety &
Licensing
P.O. Box 2244
Frankfort, Kentucky 40602

12-14-06
DATE

C. Michael Haines

C. MICHAEL HAINES, ESQ.
Natural Resources Legal Division
2 Hudson Hollow
Frankfort, Kentucky 40601
Ph: (502) 564-2356
Fax: (502) 564-9212

COUNSEL FOR COMPLAINANT

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Motion to Continue was served upon the following by mailing, postage prepaid, a true and correct copy of same to the following on this the 15th day of December, 2006:

Donald Duff, Esq.
212 Washington Street
P.O. Box 1160
Frankfort, Kentucky 40602-1160


C. MICHAEL HAINES